

STATE OF ALASKA

Department of Administration

Alaska Public Offices Commission

TONY KNOWLES, GOVERNOR

2221 EAST NORTHERN LIGHTS, RM 128
ANCHORAGE ALASKA 99508-4149
PHONE: (907) 276-4176
FAX: (907) 276-7018
e-mail: *First Name_Last Name@admin.state.ak.us*

P.O. BOX 110222
JUNEAU, ALASKA 99811-0222
PHONE: (907) 465-4864
FAX: (907) 465-4832

September 20, 2000

Jonathan Levin
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Comments
AOR 2000-24

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Alaska Democratic Party's Request for an Advisory Opinion

Dear Mr. Levin:

This letter is in response to the Alaska Democratic Party's (ADP) request for an Advisory Opinion regarding the allocation of administrative expenses and generic voter drive expenses between federal and state activity.

Background:

In 1996, the Alaska State Legislature passed legislation to reform its campaign disclosure laws. The result was contribution limits that were more restrictive, in most cases, than the federal limits. Under the new rules, only individuals and groups, including political parties, are permitted to support candidates. Business entities are prohibited from supporting candidates. Individuals may only contribute per year \$500 to a candidate, \$1,000 to a group, and \$5,000 to a political party. Groups may only contribute \$1,000 per year to a candidate. Parties are limited in the amount they may contribute to candidates. The National Committee of a political party may transfer unlimited funds to the state political party, so long as the source of those funds meets state contributions limits, including restrictions on out of state contributions.¹ The purpose of this reform is to restore the public's trust in the electoral process and to foster good government.

After the new law went into effect in 1997, staff of the Alaska Public Offices Commission (APOC) observed that state political parties, supporting both state and federal elections, were paying most, if not all, of their administrative expenses and generic voter drive expenses from federal contributions, without regard to Alaska's more restrictive campaign contribution limits. The state political parties were using contributions prohibited under Alaska law to influence state and local elections. As a result, the APOC conducted a meeting and issued a letter to the Alaska

¹ See Advisory Opinion 97-08-CD

Democratic Party (ADP) and another party to set out APOC's position that ADP must spend and report its expenditures in support of state and local elections with funds that meet Alaska's contribution limits.²

Although the ADP voluntarily reports all of its federal activity, it has taken the position that the Federal Elections Commission's (FEC) Advisory Opinion 1993-17 preempts the APOC from requiring that the ADP pay any portion of their administrative expenses and generic voter drive expenses spent on state election activity with funds that meet Alaska's campaign contribution limits. Although the ADP concedes that the clear majority of their activity is state activity, it argues that it should be able to pay all of its administrative and voter registration expenses with federal funds. The APOC asks only that the ADP's expenditures in support of state and local elections be from funds that meet Alaska's contribution limits and that ADP properly report those expenditures. The choice of an allocation method is up to the ADP as long as what is reported as state activity represents a good faith effort to comply with Alaska law. The APOC objects to the ADP paying all of their administrative expenses and generic voter drive expenses from federal funds, without regard to state law.

Alaska Statutes:

AS 15.13.010. Applicability. (a) This chapter applies

(1) in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking electoral confirmation...

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, municipality or individual for the purposes of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

AS 15.13.040. Contributions, Expenditures and Supplying of Services to be Reported.

...

(b) Each group shall make a full report upon a form prescribed by the Commission listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

² See attached letter, dated July 10, 2000, for details.

AS 15.13.065. Contributions. (a) Individuals, groups, and political parties may make contributions to a candidate. An individual or group may make a contribution to a group or to a political party.

(b) A political party may contribute to a subordinate unit of the political party, and a subordinate unit of a political party may contribute to the political party of which it is a subordinate unit.

AS 15.13.070. Limitations on amount of political contributions. (a) An individual or group may make contributions, subject only to the limitations of this chapter and AS 24.45, including the limitations on the maximum amounts set out in this section.

(b) An individual may contribute not more than

(1) \$500 per year to a candidate, to an individual who conducts a write-in campaign as a candidate or to a group that is not a political party;

(2) \$5,000 per year to a political party.

(c) A group that is not a political party may contribute not more than \$1,000 per year

(1) to a candidate, or to an individual who conducts a write-in campaign as a candidate; or

(2) to another group or to a political party.

(d) A political party may contribute to a candidate, or to an individual who conducts a write-in campaign, for the following offices an amount not to exceed

(1) \$100,000 per year, if the election is for governor or lieutenant governor;

(2) \$ 15,000 per year, if the election is for the state senate;

(3) \$ 10,000 per year, if the election is for the state house of representatives; and

(4) \$ 5,000 per year if the election is for

(A) delegate to a constitutional convention;

(B) judge seeking retention; or

(C) municipal office.

AS 15.13.400. Definitions. In this chapter ...

(4) "expenditure"

(A) means a purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;...

(5) "group" means

**(A) every state and regional executive committee of political party;
and**

(B) any combination of two or more individuals acting jointly who organize for the principal purpose to influence the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election... .

(8) "individual" means a natural person;

...

(10) "political party" means

**(A) an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at any one of the last five preceding general elections for governor;
and**

(B) a subordinate unit of the organized group of voters qualifying as a political party under (A) of this paragraph if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district or precinct....

Policy Issues:

Two common goals of the FEC and the APOC are to ensure adherence to contribution and other limits, and to provide public access to accurate and complete disclosure reports of campaign finances. In keeping with these goals, the FEC adopted 11 CFR 106.5. The main purpose of the federal regulations addressing "Allocation Methods between Federal and Nonfederal Accounts" is to provide guidance to political committees and to enhance "the Commission's ability to monitor the allocation process to ensure that prohibited funds are excluded from federal election activities." See Explanation and Justification, 55 Fed. Reg. 26058, at 26058.

11 CFR 106.5, among other things, mandates an allocation method for distributing administrative expenses and generic voter drive expenses between federal and state expenses for activities that jointly benefit both federal and non-federal candidates and elections. It is the ADP's position that 11 CFR 106.50, the very regulation that prohibits a state political party from circumventing the contribution limits for federal activity, sanctions circumventing the contribution limits for state activity. The ADP relies on FEC Advisory Opinion 1993-17 for its authority.

The ADP's administrative expenses and generic voter drive expenses comprise a significant portion of the ADP's total expenditures, 60% based on the ADP's 2000 reports filed with the APOC, and 81% based on the ADP's 1999 report filed with the APOC. In addition, the expenditures ADP reports for its federal account are comprised almost entirely of administrative expenses and generic voter drive expenses.³ Because, as the ADP itself admits, a clear majority of its activity is state activity, at least some of its administrative expenses are attributable to state activity, but little or no administrative expenses are allocated to state activity. 11 CFR 106.50 preempts state law, the FEC will eliminate the APOC's ability to ensure that prohibited funds are not used to influence state and local elections and thereby insulate from state regulation a significant part of political parties' state election activity. The FEC could not have intended to interfere with state regulation of state election activity.

Another result that the FEC likely did not intend is the creation of a double standard in Alaska law. Other types of political groups, including minor political parties⁴ that have not been involved in federal elections, must comply with Alaska's contribution limits in raising and expending funds and reporting activity. However, if 11 CFR 106.5 preempts state law, then state political parties with even minimal federal activity will avoid Alaska's contributions limits for administrative expenses and generic voter drive expenses and thereby obtain a significant advantage.

Like the FEC, the APOC does not want to make the accounting and reporting of campaign funds unnecessarily complicated. But the APOC's firm position is that political parties with federal and state activity must use funds that meet Alaska contribution limits for the state's portion of administrative expenses and generic voter drive expenses. The APOC is not interfering with the party's discretionary allocation choices. It merely asks that, once the party allocates its contributions and expenditures between state and federal activity as mandated by 11 CFR 106.5,

³ See ADP Expenses.

⁴ E.g., Republican Moderate Party, Alaska Libertarian Party, Green Party of Alaska, and Alaskan Independence party, at least since 1996.

the party report that allocation as its state percentage of shared expenses and show that the funds used to pay that percentage of expenses meet Alaska law.

Preemption:

The ADP claims that FEC Advisory Opinion 1993-17 allows 11 CFR 106.5 to preempt the state from requiring a party committee to pay any portion of its administrative expenses and generic voter drive expenses from state funds. The law on federal preemption of state regulations, however, does not support the ADP. There are three situations in which federal law preempts state law: (1) Federal law explicitly states it is preempting state law; (2) Federal law implies preemption by leaving no room for any state regulation; and (3) State law is in direct conflict with federal law. Dayoff v. Temsco Helicopters, 848 P.2d 1367, 1368 (Alaska 1983). Neither 11 CFR 106.5 nor its underlying statute expressly state that state law is preempted. Therefore there is no explicit preemption of state law. Likewise, because federal law does not regulate state election activity, federal law does not preempt state law by occupying the field. And finally, because federal and state laws can be interpreted harmoniously, the federal law does not need to preempt state regulation to resolve a direct conflict.

As previously stated, the main purpose of 11 CFR 106.5 is to provide guidance to political parties and to enhance "the Commission's ability to monitor the allocation process to ensure that prohibited funds are excluded from federal election activity." The APOC's request in no way frustrates this purpose. In fact, the APOC has the same purpose in requesting the ADP comply with Alaska's contribution limits as the FEC had in enacting 11 CFR 106.5. When enacting 11 CFR 106.5, the FEC was faced with federal contribution limits that were more restrictive than state limits. Nowhere in the Explanations and Justifications for 11 CFR 106.5 does it indicate that the FEC ever considered the reverse situation, where state law is more restrictive than federal law. When the FEC stated (in the Explanation and Justification for 11 CFR 106.5 at 55 Fed Reg 26058, at 26063) that a party committee could allocate a greater percentage of its expenses to federal activity, it must have considered federal law to be more restrictive than state law. It is unlikely that the FEC would purposefully preempt more restrictive state contribution limits and thereby institutionalize the very abuse it was trying to eliminate. Because the federal regulation itself contemplates both state and federal activity, it is far more likely that the FEC did not intend to preempt more restrictive limits.

The ADP has the burden to prove that federal law preempts the more restrictive state limitations. Silkwood v. Kerr-McGee Corp, 464 US 238, 255 (1984). Because 11 CFR 106.5 contemplates state activity, thereby leaving room for state regulation, the ADP cannot meet its burden of proof without showing that the FEC even considered more restrictive state limitations. Therefore, Alaska law is not preempted by implication.

11 CFR 106.5, on its face, mandates an allocation between state and federal activity. The APOC seeks only to regulate the portion of activity allocated to state elections. Therefore there is no direct conflict between state and federal law.

Conclusion:

11 CFR 106.5 should not be interpreted to preempt Alaska state law. By preempting Alaska law the FEC would sanction an abuse under Alaska law that it has promulgated regulations to eliminate under federal law. The goals are ostensibly the same for the FEC and the APOC with respect to federal and nonfederal activity. When interpreted together, the integrity of both laws can be maintained: funds in support of federal activity should meet federal limits and funds in support of state activity should meet state limits. Further, the public benefits from complete and accurate disclosure. Therefore the APOC respectfully requests the FEC to harmonize Alaska state law and 11 CFR 106.5 and conclude that 11 CFR 106.5 does not preempt Alaska law.

Thank you for the opportunity to address this issue, which has important consequences for the state's regulation of its own elections. The APOC respectfully requests the opportunity to respond to your draft advisory opinion to the Commission before a final determination is made.

Sincerely,
ALASKA PUBLIC OFFICES COMMISSION


Shelley Eberal
Assistant Director

cc: Senior Staff APOC
Commission Members
Nancy Gordon, Chief Asst. Atty. General
encls.

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Department of Administration

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TONY KNOWLES, GOVERNOR

2221 EAST NORTHERN LIGHTS, RM 128
ANCHORAGE ALASKA 99508-4149
PHONE: (907) 276-4176
FAX: (907) 276-7018
e-mail: First Name_Last Name@admin.state.ak.us

P.O. BOX 110222
JUNEAU, ALASKA 99811-0222
PHONE: (907) 465-4864
FAX: (907) 465-4832

March 2, 1998

Neil Reiff,
Deputy General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Dear Mr. Reiff,

This informal advice letter responds to your February 5, 1998 letter regarding the understanding of the DNC with regards to the application of the Alaska campaign disclosure law to activity in Alaska. It applies the Commission's conclusions in the attached advisory opinion to the specific statements in your letter. Staff responds to your statements as follows:

(1) The DNC, as an affiliated "party committee" with the Alaska Democratic Party (ADP), would be able to make unlimited non-federal transfers to the ADP.

The DNC's contributions to the ADP are limited in several respects. First, the ADP may not accept more than 10% of its total contributions for the year from non-resident individuals. This percentage would apply to bar any non-resident contributions through the DNC which caused the ADP to exceed that 10% cap. Second, individuals may not contribute more than \$5000 to the ADP or any of its subunits. That aggregate \$5000 cap would apply to individuals who contribute money to the ADP through the DNC.

(2) The DNC will make transfers to ADP from an account which consists of contributions solely from individuals. This account does not contain any contributions from corporations, labor unions, or groups. Contributions to this account are not limited by amount. No contribution to this account will be earmarked for any candidate or committee in any state.

All DNC transfers to the ADP must comply with Alaska campaign disclosure law. For example, Alaska law prohibits a "corporation, company, partnership, firm, association, organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group in AS 15.13.400" from contributing to Alaskan groups—including the state political party. In addition, individuals may not contribute more than \$5000 to the state political party and all of its subunits over

Letter to Neil Reiff,
DNC Deputy General Counsel

March 2, 1998
Page 2

the course of a calendar year. The ADP may not accept any contributions which fail to satisfy these limitations.

(3) The DNC will undertake an accounting analysis of this non-federal individual account on an annual basis to ensure that the pro-rata portion of each contribution transferred to Alaska does not exceed \$5000.

Both the DNC and the ADP will have to monitor the contributions being transferred from the DNC to the ADP on an ongoing basis to ensure that the ADP does not receive excess contributions.

(4) The DNC will provide [the APOC] with a copy of the pages of our reports filed with the Federal Election Commission (FEC) that reflect any non-federal activity in Alaska contemporaneously with its filing with the FEC. At the request of [the APOC], the DNC will provided additional pages from this report, or any other information requested by [the APOC]. Furthermore, it is our understanding that no contributor to this account will be required to file Form 15-5 or any other documents with [the APOC].

The DNC is not required to file separate reports with the APOC under the second alternative in the attached advisory opinion. However, the ADP must file its group reports consistent with state reporting deadlines. To satisfy disclosure requirements, the DNC will need to provide the state party details regarding contributors and contribution dates.

On its reports, the ADP must disclose for each individual contributor to the DNC whose contribution is assigned to the ADP, the date the contribution was made to the DNC and the date of the transfer to the ADP; the name, address, occupation/employer of each contributor whose money was assigned to the state party; the amount of each contribution per individual contributor, and the aggregate amount the individual contributor has contributed to the ADP. The ADP must disclose that the contributions originated with the DNC and must group the contributions in some fashion to make them easy for the public to identify.

The ADP is free to attach a copy of the relevant pages of the DNC reports filed with the FEC. Those pages would demonstrate good faith in supporting full disclosure by the Democratic Party. However, those pages alone will not satisfy the ADP's disclosure obligation.

You ask about the responsibility of contributors to file Individual Contributor Statements (Form 15-5). The APOC has not generally enforced the requirement that out-of-state contributors file Individual Contributor Statements; however, APOC could require such Statements as appropriate in a specific case or in the event that it revisits this policy.

Sincerely,
ALASKA PUBLIC OFFICES COMMISSION


Jennifer Kohout,
Assistant Director

cc: Karen Boorman, Executive Director

Letter to Neil Reiff.
DNC Deputy General Counsel

March 2, 1998
Page 3

Commission Members
Senior Staff
Joelle Hall, ADP
Kenneth Jacobus, RPA

Encl. Advisory Opinion to Kenneth Jacobus and Neil Reiff, AO 97-08-CD

Democratic National Committee

Steve Grossman, *National Chair* • Governor Roy Romer, *General Chair*

ARRIVED

FEB 10 1998

February 5, 1998

Ms. Jennifer Kouhout
Alaska Public Offices Commission
2221 E. Northern Lights Boulevard, Room 128
Anchorage, AK 99508

APPROVED:

SMHC

FEB 6 98

Dear Ms. Kouhout:

By this letter, the Democratic National Committee ("DNC") seeks to confirm its understanding of Alaska law as it pertains to our committee. It is the DNC's understanding that, effective January 1, 1997, Alaska campaign finance laws have been amended in ways that may affect the DNC's status under Alaska law and its ability to make transfers to party committees in Alaska. Specifically, Alaska law has limited how much an individual may contribute to a political party. Also, Alaska law has placed severe limitations on the ability of out-of-state groups and individuals to contribute to Alaska candidates and committees.

After a careful review of Alaska law, the DNC proposes the following conditions for its compliance with Alaska law in the event that it wishes to transfer non-federal funds to its Democratic Party affiliates in Alaska:

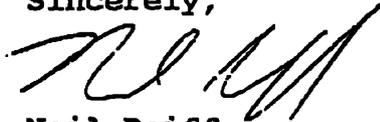
- 1) The DNC, as an affiliated "party committee" with the Alaska Democratic Party ("ADP"), would be able to make unlimited non-federal transfers to the ADP. At this time, the DNC does not contemplate making any direct contributions to Alaska candidates, and therefore, does not seek guidance regarding candidate contribution limits.
- 2) The DNC will make transfers to ADP from an account which consists of contributions solely from individuals. This account does not contain any contributions from corporations, labor unions, or groups. Contributions to this account are not limited by amount. No contribution to this account will be earmarked for any candidate or committee in any state.
- 3) The DNC will undertake an accounting analysis of this non-federal individual account on an annual basis to ensure that the pro-rata portion of each contribution transferred to Alaska does not exceed \$5,000.
- 4) The DNC will provide your office with a copy of the pages of our reports filed with the Federal Election Commission ("FEC") that reflect any non-federal activity in Alaska contemporaneous with its filing with the FEC. At the request of your office, the DNC will provide additional pages from this report, or any other

Ms. Jennifer Kouhout
February 5, 1998
Page Two

information requested by your office. Furthermore, it is our understanding that no contributor to this account will be required to file Form 15-5 or any other documents with your office.

If my understanding of Alaska law is incorrect, please inform me immediately. I can be reached at (202) 479-5111, or at the Democratic National Committee, 430 South Capitol Street, S.E., Washington, DC 20003. Thank you for your time and attention to this matter.

Sincerely,



Neil Reiff
Deputy General Counsel

FEB 7 1998

FEB 10 1998

STATE OF ALASKA

Department of Administration

Alaska Public Offices Commission

TONY KNOWLES, GOVERNOR

2221 EAST NORTHERN LIGHTS, RM 128
ANCHORAGE ALASKA 99508-4149
PHONE: (907) 276-4176
FAX: (907) 276-7018
e-mail: *First Name_Last Name@admin.state.ak.us*

P.O. BOX 110222
JUNEAU, ALASKA 99811-0222
PHONE: (907) 465-4864
FAX: (907) 465-4832

March 2, 1998

Ken Jacobus, Attorney for the Republican Party of Alaska
Law Offices of Kenneth P. Jacobus, P.C.
425 G Street, Suite 920
Anchorage, Alaska 99501-2140

Neil Reiff, Deputy General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re: Advisory Opinion regarding the compliance requirements of national political party committees under Alaska's campaign disclosure law—AO 97-08-CD

Dear Mr. Jacobus and Mr. Reiff:

This letter responds to the sixth question of Mr. Jacobus' advisory opinion request dated January 8, 1997. Mr. Jacobus inquired about the applicability of the Alaska Campaign Disclosure Act to the Republican National Committee's (RNC) contributions to the Republican Party of Alaska (RPA). He asked if the law limits in any way the RNC's contributions to the RPA, including the time, purpose or amount of the funding.

The letter also responds to correspondence from Mr. Reiff of the Democratic National Committee (DNC) proposing certain conditions for the DNC's compliance with Alaska law in the event that it wishes to transfer non-federal funds to Democratic Party affiliates in Alaska.

The advice in this letter was approved by an affirmative vote of four Commission members on February 26, 1998.

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 2

Summary

Alaska campaign disclosure law applies to all funds contributed by a national political party committee to a state political party for use in state and local campaigns. The RPA and the Alaska Democratic Party (ADP) are political party groups under the Alaska campaign disclosure law. Thus, when a national political party committee contributes funds to the RPA or ADP for use in state and local campaigns, such contributions are regulated by Alaska law.

A national political party committee which plans to participate in Alaska elections, must comply with the requirements of Alaska campaign disclosure law. The two alternatives described below provide a mechanism to do so. Other alternatives may exist. Before undertaking a different alternative, you should first consult with the Alaska Public Offices Commission (APOC) as to its legality.

In the first alternative, the RNC may establish an Alaska group to hold funds it plans to contribute to the RPA for use in Alaska elections. As long as the Alaska group meets the reporting requirements and limitations placed on Alaska political party groups and is recognized as a subdivision by an Alaskan political party, it may transfer qualifying funds to the RPA in unlimited amounts.

In the second alternative, as the DNC has inquired, the national political party committee may "assign" contributions to the ADP, if those assignments are consistent with the limitations and disclosure requirements of Alaska law. All contributions assigned by the DNC must satisfy state law with regard to type and amount. Contributions must be from individuals and they must not exceed \$5000 when added to the amount that an individual has contributed directly to any other group within the ADP. In addition, the ADP must be careful not to exceed the ten percent cap on non-resident contributions. All assignments under this second alternative must be specifically disclosed on state party reports as transfers from the national political party account.

The Law

Definitions:

- **AS 15.13.400(5)** defines "group" as
 - (A) every state and regional executive committee of political party; and
 - (B) any combination of two or more individuals acting jointly who organize for the principal purpose to influence the outcome of one or more elections

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 3

and who take action the major purpose of which is to influence the outcome of an election

- **AS 15.13.400(10)** defines "political party" to mean:

- (A) an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at any one of the last five preceding general elections for governor, and
- (B) a subordinate unit of the organized group of voters qualifying as a political party under (A) of this paragraph if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, election district, or precinct.

Contributions Limitations:

- **AS 15.13.070(b)(1)**

An individual may contribute not more than \$ 500 per year . . . to a group that is not a political party.

- **AS 15.13.070(b)(2)**

An individual may contribute not more than \$5000 per year to a political party.

- **AS 15.13.065(a)**

Individuals, groups, and political parties may make contributions to a candidate.

- **AS 15.13.070 (c)(2)**

A group that is not a political party may contribute not more than \$1000 per year to another group or a political party.

- **AS 15.13.072 (a)(3)**

This provision prohibits candidates from accepting or soliciting contributions from a non-resident group. A non-resident group is one which is "organized

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 4

under the laws of another state, resident in another state, or whose participants are not residents of [Alaska] at the time the contribution is made."

- **AS 15.13.072(f)**

This provision applies to any group or political party active in Alaska (including non-resident groups and national political party committees). It provides that a group or political party may not accept more than 10% of its total contributions during the calendar year from non-resident individuals.

Background

Each year, approximately 225 groups register with the Alaska Public Offices Commission. Registration is required before a group may make expenditures. Generally, about 10% of all registered groups were non-resident; about 2% were national political party groups.

In the 1993-94 election cycle, for example, 17 non-resident non-political party groups were active in Alaska. They collectively contributed \$62,000 to Alaska candidates. This represented less than 5% of the \$1,242,807 contributed to candidates by all non-party groups during this period.

In the 1993-1994 election cycle, four national political party groups were active in Alaska. They collectively contributed \$143,000 to their Alaska subsidiaries. While not all of this money was used to fund direct contributions to candidates, it represents about 14% of the total amount contributed by Alaskan political party groups to candidates in 1994.

Reporting Requirements and Political Party Status For National Party Groups Under the Old Law.

Alaska's new campaign disclosure law took effect January 1, 1997. Prior to that date, national political party committees and non-resident groups were free to conduct activity in Alaska. The Commission, under the old law, adopted a set of reporting guidelines and procedures which reflect the unique elements of non-resident group disclosure.

Non-resident groups, by definition, are principally active outside Alaska. They differ from Alaska based groups in several ways:

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 5

- Most non-resident groups became active nationally prior to undertaking activity in Alaska.
- Most non-resident groups, prior to engaging in Alaskan campaign activity, have collected funds in accordance with Federal Election Commission (FEC) guidelines or guidelines in other states - which differ from Alaska requirements.
- Most non-resident groups raise and spend only a fraction of their funds in Alaska.
- Most non-resident groups are established so that their accounting procedures meet filing deadlines in jurisdictions which do not usually correspond to Alaska's due dates (most, for example, file according to FEC deadlines).
- Most contributors to non-resident groups are not aware of the requirement to file a Contributors Statement upon contributing more than \$ 250.

In the past, the Commission, in recognition of these differences, administered the provisions of AS 15.13 in a manner that permitted non-resident groups to report using the formats and schedules most convenient to them. For example:

- The Commission interpreted the registration requirement for non-resident groups to mean that a group was required to register before making a contribution in Alaska rather than before undertaking any activity .
- The Commission permitted a non-resident group to satisfy Alaska reporting requirements by submitting reports using the reporting forms the group had already prepared for other states or the Federal Election Commission (FEC).
- The Commission permitted a non-resident group to meet Alaska filing deadlines by filing a copy of its reports with APOC at the time the reports were filed with other states or the FEC.
- Due to limited resources, generally, the Commission did not monitor non-resident group filings for lateness, and thus did not penalize non-resident groups for late reports.
- Generally, the Commission did not request that contributors to non-resident groups file Contributor Statements, except in connection with matters involving a complaint.

In at least one instance, however, the Commission treated national political party committees in the same manner as Alaskan political party groups - the political party exemption from the \$1000 contribution limit. The Commission granted national political party committees, where appropriate, political party exemption status.

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 6

Briefly, the political party exemption was a provision in the old law which permitted a qualifying political party, and its official subdivisions, to contribute more than \$1000 to a candidate. In order to qualify for exemption status, an Alaskan political party group had to field a candidate for governor who received at least three percent of the vote at a general election.

The Commission interpreted the party exemption to extend to a national political party committee so long as the committee was a part of the hierarchy of a political party qualifying for exemption status in Alaska.

The law contains new compliance requirements for non-resident groups generally and for national political party groups.

One of the purposes of the new campaign disclosure law is to limit the influence of campaign contributions which originate outside Alaska. Thus, the law includes reporting requirements, contribution limitations, and campaign finance prohibitions which - both directly and indirectly - restrict the ability of non-resident groups to participate in Alaskan campaigns.

First, the new law includes two provisions which directly limit the campaign activities of all groups, including those based outside Alaska:

- AS 15.13.072 (a)(3) prohibits candidates from accepting or soliciting contributions from a non-resident group. A non-resident group is one which is "organized under the laws of another state, resident in another state, or whose participants are not residents of [Alaska] at the time a contribution is made."
- AS 15.13.072(f) applies to any group or political party active in Alaska (including non-resident groups and national political party committees) and states that a group or political party may not accept more than 10% of its total contributions from non-resident individuals.

Secondly, the new law contains limits and prohibitions which are difficult for non-resident groups to meet, particularly if they are organized as federal committees. Alaska's restrictions are more severe than federal law and, in some cases, other states, particularly in the following areas:

- An individual may not contribute more than \$500 per year to a group that is not a political party. AS 15.13.070(b)(1)

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 7

- An individual may not contribute more than \$5000 per year to a political party. AS 15.13.070(b)(2)
- Corporations may not contribute to groups or political parties. Only "individuals, groups, and political parties may make contributions to a candidate." AS 15.13.074(f) and AS 15.13.065(a).
- A group that is not a political party may contribute not more than \$ 1000 to another group or a political party. AS 15.13.070(c).
- A group may not use campaign funds except for purposes that "reasonably relate" to election campaign activities. AS 15.13.112(a).

Thus, the statute contains unique limitations for groups organized under federal law, or the laws of other states, if those groups wish to use their funds in Alaska, or raise future funds for use in Alaska. In most instances, federal groups raise, or have already raised, money according to limits higher than those allowed under AS 15.13. For example, under federal law, national political party committees can accept individual contributions of up to \$20,000 per year. Under federal law, non-resident non-party groups, such as corporate PACs, can accept contributions of up to \$ 5000 per year from individuals. Thus, a group organized under federal law would need to self-impose new fundraising constraints in order to raise funds for use in Alaska, and would not be able to use "contaminated" funds.

A third consideration is that the new law underscores the importance of timely and complete disclosure compliance through providing for civil penalties for certain reports for which no penalties were provided in the past. Maximum penalties for group campaign disclosure reports were increased from \$10 and \$50 per day to \$50 and \$500 per day respectively.

Fourth, Alaska's new campaign disclosure law now includes a definition of "political party," which, in turn, focuses on actions which occur at the state level rather than the national level.

AS 15.13.400(5) defines "political party" to mean:

- (A) an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at any of the last five preceding general elections for governor, and

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 8

(B) a subordinate unit of the organized group of voters qualifying as a political party under (A) of this paragraph if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, election district, or precinct.

One could argue that this focus meant that the new law does not intend for national political party committees to be included where the term "political party" is used in the new statute. However, this would be problematic for national political party committees. It would mean that national political party committees are simply non-resident groups, and thus could not contribute to any candidate for state or local office in Alaska, and could contribute only \$1000 to a political party in Alaska.

Staff believes that the Commission should view a national political party committee as a part of the same organization as its state and local affiliated committees if certain conditions are met.

Analysis

Overview

Political parties are organized to elect federal, state, and local candidates. For example, the RNC, as the national organizing unit of the Republican Party, cooperates with state and local party organizations to help recruit, advise and elect Republican candidates. And conversely, the RPA, as the statewide organizing unit of the Republican Party in Alaska, cooperates with both national and local party organizations to help elect federal, state and local candidates.

Contributions and expenditures by both the RNC and the RPA, when made in connection with federal campaigns, are regulated by the Federal Election Campaign Act (FECA), which is administered by the Federal Elections Commission (FEC). FEC regulations include provisions for prorating and reporting contributions and expenses when the money is for goods or services which benefit both federal campaigns and state or local campaigns.

Contributions and expenditures by both the RNC and the RPA, when made in connection with state or local campaigns are regulated by the Alaska Campaign Disclosure Act, which is administered by the Alaska Public Offices Commission. In this regard, national political party committees, when they participate in state and local elections, are allowed to do so because of their affiliation with a state political party.

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 9

Campaign Disclosure Limitations on Political Parties

Alaska's campaign disclosure law went into effect on January 1, 1997. The new law restricts political parties in several ways:

- The law now limits contributions to a political party with regard to the residency of the contributor; no more than ten percent of contributions to a political party may come from individuals who reside outside Alaska.
- The law now limits to \$5000 the amount an individual may contribute annually to a political party.
- The law now limits to \$1000 the amount that a non-party group may contribute annually to a party; however, party groups may make unlimited intra-party transfers of funds.
- The law now limits the amount that a political party may contribute annually to a candidate according to the office which the candidate seeks; the amount varies from \$5000 for a municipal candidate to \$100,000 for a gubernatorial candidate.

The RNC becomes subject to the limitations outlined above when it contributes funds to the RPA for use in state or local campaigns in Alaska.

Options for National Party Participation

Viewing the national political party committee as part of the same organization as its state and local affiliated committees is consistent with how national parties have operated in Alaska in prior years. While the new law did not significantly change the Commission's definition of a political party, it did place additional limitations on political parties and out-of-state individuals and groups. As a result, national parties that participate in Alaska elections must comply with those limitations. The alternatives below provide two mechanisms to do so.

Alternative 1. State Political Party Subdivision

A national political party committee may create a group which qualifies as a subdivision of a state political party under AS 15.13, if it is recognized as such by the Alaska state party central committee and if it complies with the requirements of the Alaska campaign disclosure law.

Because the RNC raises most of its money outside Alaska, it may not make contributions from its general fund to the RPA for use in state and local campaigns.

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 10

Presumably, more than ten percent of the RNC's funds are contributed by individuals who reside outside Alaska.

However, if the national political party committee establishes a group that observes Alaska's limits and requirements, it can participate in Alaska elections. To form a group, the national political party committee must segregate the money it intends to contribute to Alaska elections. For the purpose of this discussion only, the transfer of RNC contributions to an Alaska group account is referred to as an "assignment." As an out-of-state group, the national party Alaska group could participate in Alaska elections to a limited extent. For example, it could contribute up to \$1000 to the state political party or to another Alaska group. It could not contribute directly to Alaska candidates. However, if the group is recognized as a subdivision of the state party, it receives the benefits of party status. To be recognized as an official political party subdivision, the RNC Alaska account must do the following:

- register as a group with the Commission; and
- submit a letter from the chair of the RPA acknowledging that the RNC Alaska account is an official subdivision of the RPA.

Reporting

As described above, the RNC must first register its Alaska account as a group. Once registered, the RNC Alaska group would file Alaska group reports disclosing all activity by the group. Those reports would be due according to Alaska deadlines.

Contributions and Expenditures

The national party committee Alaska group would share in the collective limit on contributions to and by the Alaskan party which recognized it as an affiliated party group. According to the campaign disclosure contribution limitations, an individual may give no more than \$5000 to a state political party. Contributions assigned to the Alaska group account by the national party committee would count towards the limit of the affiliated state party. As a result, the RNC Alaska group would be responsible for advising the candidates to whom it makes contributions that those contributions count towards the annual limit the candidate may receive from all units of the state political party.¹

A political party may accept no more than ten percent of its contributions from non-resident individuals. In this scenario, contributions to the national party committee Alaska group account by non-resident individuals would count towards the state

¹ Ensuring that a contribution complies with the requirements of AS 15.13 is the responsibility of both the contributor and the candidate.

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 11

political party's ten percent limit. This arrangement would honor the limitation on outside influence by placing a ceiling on non-resident contributions accepted by the state party. For this reason, the RNC Alaska group must work with the RPA to monitor the funds it receives from non-resident individuals so that the RPA does not accept more than ten percent of its contributions from non-resident individuals.

A national political party committee, which registers an Alaska account as an Alaska political party group, may "assign" to the Alaska group account any contributions made to the national committee which satisfy Alaska campaign disclosure law. If the national political party committee makes an assignment, however, it has a responsibility to notify contributors that all or a portion of a contribution has been assigned to an Alaska state party subdivision and counts towards the aggregate amount that may be contributed to the state party.

Alternative #2. Assign a subset of contributors to the state party

Rather than create a segregated Alaska group, the national political party committee may accept contributions and direct them to the state party if those contributions satisfy state law. For the purposes of this discussion only, that direction is referred to as an "assignment." This approach permits participation by the national political party committee by placing the filter of state campaign disclosure law at the point at which the money reaches the state party.

As a result, the national political party committee may assign to the state party contributions from its general account, even though that general account contains more than ten percent of its money from outside Alaska; also, individual contributors to the national party general account may have exceeded the \$5000 state limit. So long as the contributions assigned to the state political party satisfy state law—for example, they do not exceed \$5000 per individual—they will be permitted, provided all other legal and procedural requirements are met.

In this alternative, the national political party committee acts as a conduit, reallocating contributions from the national to the state level. Permitting the political parties to take advantage of this arrangement is appropriate because of their unique status in the political process—a status explicitly recognized in state law. In addition, national political parties are organically linked with their state and local committees, having complex interlocking finances which provide for staffing, administrative resources, and the like. These arrangements are the economic manifestation of political parties' fundamental need to associate. This constitutional tie between national and state parties permits this arrangement and distinguishes this situation from that of a corporate or union PAC with national and state affiliates.

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 12

Reporting

The national political party committee would not have to register or file separate reports. Instead, the state political party would disclose on its reports the names of all individuals whose contributions are assigned by the national party committee to the state party. To facilitate complete disclosure, staff also recommends that the Commission require that contributions assigned under this scenario be specifically designated as being transferred from the national political party committee. In addition, the names of all contributors should be grouped together on the state reports. This will ensure that the public is notified of the origin of these particular contributions.

Contributions and Expenditures

As with the separate Alaska group account, contributions to the national party committee would count towards the state party limit for each individual's contribution if assigned to the state party. Again both the RNC and the RPA would share in the obligation of advising contributors that a contribution to the RNC counted towards their \$5000 limitation to the RPA if it were assigned to the state party.² The national party committee would be able to assign an unlimited amount to the state party as long as the percentage of non-resident contributions did not exceed ten percent of total contributions made by all contributors to the state party in that calendar year. This limitation is consistent with the language and intent of the campaign disclosure law to restrict the outside influence on Alaskan elections.

Conclusion

National political parties who wish to participate in Alaska elections may take advantage of the two alternatives described above. Other alternatives may exist. Before undertaking a different alternative, you should consult with the APOC.

First, a national political party committee may establish an Alaska group. Once registered and recognized as a subdivision by the state political party, the group may function as part of the state party.

² Because this alternative lacks the additional disclosure provided by the registration and reporting of a distinct subdivision, it puts the individual contributors and the state party at greater risk for violating the prohibition against excess contributions. For this reason, it will require careful administrative attention.

Kenneth Jacobus & Neil Reiff (National Party Contributions)
AO 97-08-CD

March 2, 1998
Page 13

Second, a national political party committee may assign to its affiliated state party specific contributions which satisfy state law. Those contributions must meet the limitations of the campaign disclosure law with regard to type and amount and they must be fully disclosed.

Sincerely,
ALASKA PUBLIC OFFICES COMMISSION


Jennifer Kohout
Assistant Director

cc: Karen Boorman, Executive Director
Commission Members
Senior Staff
Joelle Hall, ADP
Len Karpinski, ALP

STATE OF ALASKA

Department of Administration

Alaska Public Offices Commission

TONY KNOWLES, GOVERNOR

2221 EAST NORTHERN LIGHTS, RM 128
ANCHORAGE ALASKA 99508-4149

PHONE: (907) 276-4176

FAX: (907) 276-7018

e-mail: *First Name_Last Name@admin.state.ak.us*

P.O.BOX 110222
JUNEAU, ALASKA 99811-0222
PHONE: (907) 465-4864
FAX: (907) 465-4832

July 10, 2000

Ms. Joelle Hall
Alaska Democratic Party
PO Box 104199
Anchorage, AK 99510

Dear Ms. Hall:

I am writing to follow up on our recent conversations with representatives from the Alaska Democratic Party and the Republican Party of Alaska. We recently met with representatives from both parties to discuss our concerns about the disclosure and use of federal and state (nonfederal) money. We have two concerns in this area: (1) The parties' campaign disclosure reports must clearly identify what money the parties have used to influence the outcome of state and local elections. (2) Political parties with federal and state funds must use a percentage of their state funds to pay for administrative and generic voter drive expenses.

Disclosure

In the interest of giving the public a complete picture of party activity, both major parties currently disclose all activity the party undertakes including federal activity. However, the distinction between state and federal activity should be clear. We have discussed two options to make this distinction clear.

The first option is to file all activity using the state format with a clear distinction of accounts. This report consists of three "sections". The first section is a "combination" summary sheet that combines both state and federal activity. This will give the public an overall view of the total party activity. The next section includes a summary sheet consisting of only state activity with the detail sheets (income, expenses, etc...) following. This second section must be clearly labeled indicating that it represents state activity only. The third section includes a summary sheet (with detail sheets following) disclosing federal activity. Again, this section must be clearly marked indicating that it consists of federal activity only. The combination of the three sections will give the public a full view of the party activity that clearly distinguishes between state and federal activity.

The second option is similar to the first, however, for the "third section" disclosing federal activity, you may attach the appropriate FEC reports for the reporting period. If this option is chosen, it is important to remember to attach all FEC reports that correspond to the reporting period.

Use

The second concern regarding party operations relates to the payment of administrative and generic voter drive expenses. It is our understanding that federal law sets a minimum percentage of joint costs that must be paid from the federal account. This percentage is based on the number of federal and state candidates in a two year election cycle. Under federal law, it is permissible for 100% to be paid with federal dollars. However, since part of the parties business is to influence state elections, a portion of the administrative and generic voter drives expenses must be paid from the state account.

It is our understanding that the federal law requires checks for administrative and other expenses to be written from a federal account. You then have a 70 day window (10 days prior to and 60 days after the expenditure) to reimburse a portion of the costs from the non-federal (state) account. Thus, to avoid making an illegal non-monetary contribution from federal funds, the party must reimburse the federal account with state funds. The amount of that reimbursement is the maximum amount that may be spent from state (nonfederal) funds.

Another alternative is to set up an Allocation account. The federal allocation account allows you to make periodic deposits from both federal and nonfederal accounts. Thus, deposits can be made with the correct percentages and checks written from this account.

Whether you decide to use the allocation account, or reimburse the federal account within 60 days, there should be a system in place to report the shared expenditures. You should have the procedure in place for the 10 Day Post-Primary Report due September 1, 2000.

If you have any questions or concerns, feel free to contact us at 276-4176. Thank you.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

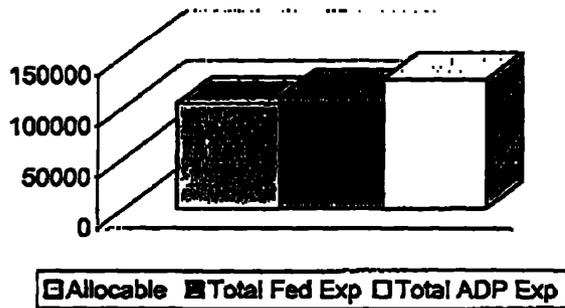


Therese Greene
Group Coordinator

ADP EXPENSES

1999 (Off Year - No State or Federal Election)

Upon reviewing the 1999 Year End Report for the ADP it appears there are approximately \$103,383.49 of administrative or generic voter drive expenses that are potentially allocable. That is 93.5% of the total expenses reported on the Federal Expenditure sheet for the ADP or 81% of the ADP's total expenditures for 1999.



2000 (State and Federal Election Year)

Upon reviewing the 2000 30 Day Pre-Primary, 7 Day Pre-Primary and the 10 Day Post-Primary Reports for the ADP, it appears there are approximately \$70,711.15 of administrative and generic voter drive expenditures that are potentially allocable. That is 93.5% of the total expenditures reported on the Federal Expenditure sheet for the ADP or 60.3% of the ADP's total expenditures thus far in 2000.

